



Advocates for Rural Broadband

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**FILED VIA ECFS**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**RE: WC Docket No. 11-42, Federal-State Joint Board on Universal Service Lifeline and Link Up Reform and Modernization**

**WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support**

**WC Docket No. 10-90, Connect America Fund**

Dear Ms. Dortch:

On Tuesday, October 18, 2016, the undersigned and Derrick Owens on behalf of WTA – Advocates for Rural Broadband (“WTA”),<sup>1</sup> along with Brian Ford on behalf of NTCA–The Rural Broadband Association (“NTCA”),<sup>2</sup> on behalf of (the “Rural Associations”) met with Amy Bender, legal advisor to Commissioner Mike O’Rielly. The parties discussed the Petition for Reconsideration (“Petition”) filed by the Rural Associations on June 23, 2016<sup>3</sup> in response to the *Lifeline Universal Service Fund (“USF”) Modernization Order*<sup>4</sup> adopted in this proceeding as well as issues raised by various other similar petitions.<sup>5</sup>

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<sup>1</sup> WTA – Advocates for Rural Broadband is a national trade association representing more than 300 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

<sup>2</sup> NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

<sup>3</sup> NTCA & WTA Petition for Reconsideration and/or Clarification , WC Docket Nos. 11-42, 09-197, and 10-90 (fil. Jun. 23, 2016) (“Rural Associations’ Petition”).

<sup>4</sup> Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197, Connect America Fund, WC Docket No. 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (“*Lifeline Modernization Order*”).

<sup>5</sup> United States Telecommunications Association Petition for Reconsideration and Clarification, WC Docket Nos. 11-42, 09-197, and 10-90 (fil. Jun. 23, 2016) (“USTelecom PFR”); United States Telecommunications Association Petition for Waiver, WC Docket Nos. 11-42, 09-197, and 10-90 (fil. Oct. 3, 2016) (“USTelecom Petition for Waiver”).

## **Minimum Service Standards**

The Rural Associations first addressed the fixed broadband Internet access service (“BIAS”) minimum speed standard adopted in the *Lifeline Modernization Order*.<sup>6</sup> Specifically, the Rural Associations in their petition seek reconsideration of the exception to the 10/1 minimum speed standard for fixed BIAS that makes a Lifeline discount available to qualifying low-income consumers for service at speeds of no less than 4/1 Mbps. In adopting the exception, the Commission stated that providing Lifeline support to low-income consumers for speeds of less than 4/1 would “ensure that providers who offer ‘second-tier’ service are not rewarded for failure to upgrade their networks.”<sup>7</sup>

The Rural Associations stated that while it is critical to ensure that limited USF resources are used to provide low-income consumers with broadband services comparable to other consumers, the Commission’s universal service policies must also be cognizant of the “facts on the ground.” Despite significant progress that RLECs have made in making high-quality broadband available to their rural areas, 19 percent of rural Americans lack access to a minimum 4/1 fixed broadband service today.<sup>8</sup> Indeed, the Commission itself recognized as much in its recent High Cost USF Reform Order where it accounted for the fact that a number of rural census blocks lack 4/1 today and that funding provided pursuant to reforms to that mechanism will be insufficient to remedy that reality for some locations.<sup>9</sup> Moreover, an RLEC or other provider may be able to meet the 4 Mbps (or 10 Mbps) download requirement but unable to deliver upload speeds of 1 Mbps or greater without further network upgrades – even as, in some cases, the rules governing High Cost support distribution may effectively deter or even preclude such upgrades. Thus, the exception to the minimum service speed standard must enable rural low-income consumers to apply the Lifeline discount to any standalone broadband or bundled voice and broadband service package they so choose and that is otherwise generally available from that provider to any other consumer in that geographic area. Indeed, the Commission should not deny a consumer Lifeline support for which they are eligible if 4/1 is not generally available to *any* consumer there.

The Rural Associations reiterated that their position on the terms of the exception should not be taken as support for substandard service for *any* rural consumer. To the contrary, the principle of “reasonable comparability” is not only the backbone of the Rural Associations’ advocacy, it is a statutory mandate. Thus even 10/1 speeds – which is all that the current High-Cost USF budget will allow – will prove insufficient over time to ensure “reasonable comparability” between rural and urban America. Pending a more comprehensive assessment of whether current High Cost program rules and budgets can ensure the “reasonable comparability” of services for all consumers – low income or otherwise – in rural areas, the Commission’s Lifeline rules must be calibrated for the facts as they exist today and enable low-income consumers to apply the Lifeline discount to the same BIAS service as is available to their more affluent neighbors.

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<sup>6</sup> *Lifeline Modernization Order*, ¶ 86.

<sup>7</sup> *Id.*, ¶ 111.

<sup>8</sup> *See*, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Improvement Act, GN Docket No. 15-191, 2016 Broadband Progress Report, FC 16-6, at 34, n. 242 (Jan. 29, 2016).

<sup>9</sup> *See*, Connect America Fund, *et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016) (“Rate-of-Return Reform Order”), ¶ 26 (stating that for RLECs electing model-based support, locations that are not fully funded – those with a calculated average cost above the funding cap – the requirement to offer broadband meeting the requisite performance standards including speed will be subject to the “reasonable request” standard); *See also*, *Id.*, ¶ 178 (stating that for carriers electing Connect America Fund Broadband Loop Support funding, “[i]n addition to defined obligations to extend service to a subset of locations within a five-year period, rate-of-return carriers remain subject to the reasonable request standard for their remaining locations.”).

The Rural Associations also highlighted an incongruity between implementation of the High-Cost USF Reform Order and footnote 133 of the *Lifeline Universal Service Fund (“USF”) Modernization Order* which would require high-cost support recipients to offer a standalone broadband service to Lifeline consumers.<sup>10</sup> The Rural Associations noted that even with reforms intended to resolve the “standalone broadband issue,” it will still be more costly for rural consumers in many cases to purchase standalone broadband service rather than a bundle of voice and broadband service due to the structure of High-Cost support mechanisms and budgetary constraints that limit support and increases consumers’ share of a standalone broadband retail rate. Furthermore, state universal service funding mechanisms still tie support to voice lines and will not provide high-cost support for broadband-only loops, pushing upward retail rates for standalone fixed BIAS for rural consumers. As a result, many RLECs today do not provide any of its current or potential customers with the option to purchase standalone broadband service and are unlikely to do so in the foreseeable future barring substantial changes to Federal and state high-cost support mechanisms and budgets. To comply with the new requirement, RLECs and their affiliates would be required to undergo the administrative expense to develop a new service offering that few, if any, consumers – let alone low-income consumers – would find affordable. At a time where RLECs are faced with other substantial regulatory compliance and costly network buildout obligations, diverting additional resources to development of such a service offering would be futile for RLECs and their customers alike.

Finally with respect to minimum service standards adopted in the Lifeline program, the Rural Associations reiterated the need for the limited exception to apply to circumstances in which ETCs lack access to sufficient terrestrial backhaul to comply with a 150GB monthly minimum data usage allowance.

### **Streamlined Program Eligibility**

The Rural Associations then expressed support for the USTelecom’s Petition for Reconsideration and Petition for Waiver asking the Commission to delay the effective date of the streamlined eligibility criteria in states most effected by the Federal Lifeline program’s streamlined eligibility criteria. Due to reforms to the Federal Program, a number of states have state Lifeline eligibility criteria that do not align with the Federal Lifeline Program as a direct result of eliminating Low-Income Home Energy Assistance Program (“LIHEAP”), National School Lunch Program’s free lunch program (“NSLP”), and Temporary Assistance for Needy Families (“TANF”) from the default federal assistance eligibility for Lifeline and adding the Veterans Pension benefit or Survivors Pension benefit programs as Lifeline qualifying programs.<sup>11</sup> Moreover, a number of the Rural Associations’ members provide service in states that administer their own state Lifeline program (*i.e.*, states in which low-income consumers may obtain a discount in addition to the Federal \$9.25 discount). These states too have disparate state and Federal criteria to determine whether a subscriber is eligible for support, with disparities enshrined in a combination of regulations and statutes. Furthermore, some states conduct eligibility verification and provide a list of eligible subscribers or a simple “yes or no” answer upon carriers query of a state database without identification of which specific program was used by the low-income consumer to qualify for the Lifeline program. Some states have begun processes to address complications arising out of disparate state and Federal Lifeline eligibility criteria and administrative processes, but some states will be unable to align their requirements with the Federal Lifeline program before the December 2, 2016 effective date of such a rule change.

Disparities in eligibility criteria will result in significant customer confusion and administrative burden for RLECs. For one, RLECs will be required to explain changes to the program to consumers recertifying their continued eligibility for the program and in fact will be required to act in the capacity of social welfare agents in

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<sup>10</sup> *Lifeline Modernization Order*, n.133.

<sup>11</sup> See Letter from Sally A. Talberg, Norman J. Saari, and Rachel Eubanks, Commissioners, Michigan Public Service Commission to Marlene Dortch, WC Docket No. 11-42 (filed Aug. 23, 2016) (describing the MPSC’s concerns regarding the effective date of new federal eligibility criteria and conflict with Michigan’s telecommunications law which sets a 150% federal poverty guidelines income threshold, inclusion of LIHEAP, TANF, and NSLP as qualifying Lifeline programs, and exclusion of the Veterans and Survivors Pension Benefit program).

working with Lifeline subscribers to ensure that they are enrolled in a qualifying program prior to completing their recertification. Carriers in states which rely entirely on state administrators to provide eligibility verification through querying a database or receiving lists of eligible subscribers must develop new administrative procedures to ensure that it only provides Federal Lifeline discounts to consumers eligible under the streamlined criteria or must rely on their state administrators making necessary changes to their eligibility verification processes. RLECs will also be required to review billing and customer records to ensure that the proper Lifeline billing code(s) (and discount) are being applied to individual consumers.

In short, the attempt to “streamline” and simplify eligibility criteria has resulted in the opposite effect as carriers of all sizes and consumers are already confused regarding which criteria should be included in advertisements for the Lifeline program, used to enroll new customers and recertify existing Lifeline subscribers. States too need additional time to conform their state Lifeline eligibility criteria with the Federal Lifeline criteria, either through amending regulatory rules or statutes and the fact that some do not have legislative sessions this year only exacerbate the matter. Requiring Lifeline providers in these states to implement administrative processes to ensure compliance with streamline eligibility criteria would be unduly burdensome – particularly for small carriers such as RLECs and their affiliates – considering that providers will be removed entirely from the eligibility verification process upon establishment of the National Verifier. The Commission should therefore grant USTelecom’s request to waive the effective date in states which provide additional Lifeline discounts based on criteria not aligned with the Federal criteria and/or in which a third-party or state administrator perform eligibility verification to enable states to conform their rules to the Federal requirements and/or give carriers additional time to develop processes to identify and properly document which eligibility criteria their customers meet.

### **Rolling Recertification**

The Rural Associations also discussed their request for reconsideration of the “rolling recertification” requirement adopted in *Lifeline Modernization Order* that will require Lifeline providers to recertify their Lifeline customers’ continued eligibility annually as measured from each individual subscriber’s service initiation date.<sup>12</sup> While ostensibly adopted to limit the burden on the National Verifier in terms of conducting recertification of Lifeline subscribers at the end of the year, this provision will be quite burdensome for the Rural Associations’ members. RLECs in many cases have not historically tracked subscribers’ service initiation dates within their internal systems and therefore will need to access the National Lifeline Accountability Database for every customer or conduct investigation of customer records to determine the date governing independent customer rolling recertification deadlines. Moreover, it is unclear whether recertification would be based on when subscribers enrolled in Lifeline with *any* carrier as opposed to when the RLEC first provided a Lifeline discount to the individual subscriber. For RLECs with a staff of approximately 25 or fewer employees the task of investigating and tracking subscriber initiation dates on a daily or monthly basis will be extremely time consuming. RLECs have long found it simpler to conduct the recertification all at once at the end of the year and typically already have internal administrative processes in place to conduct recertification by December 31. Amending existing processes will prove especially burdensome for the Rural Associations’ members, however, this increased burden is not unique to small carriers.<sup>13</sup>

In addition to being an unduly burdensome and unnecessary change to the administration of the Lifeline program, the Commission failed to provide the public with notice and an opportunity to comment on a shift

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<sup>12</sup> *Lifeline Modernization Order*, ¶ 416.

<sup>13</sup> Rural Associations’ Petition, pp. 13-14; USTelecom Petition, p.3; General Communication, Inc., Petition for Reconsideration and/or Clarification, p. 1-2 (fil. Jun. 23, 2016) (noting additional burdens on some ETCs and additional inconvenience for some subscribers arising from rolling recertification).

toward rolling recertification as required by the Administrative Procedure Act.<sup>14</sup> As described in the Rural Associations’ Petition for Reconsideration, the Commission merely sought comment on the administrative functions of the National Verifier and omitted any indication that it intended to modify the existing recertification process before providers’ duties are transferred to the National Verifier.<sup>15</sup> Indeed no service providers in the record addressed rolling recertification prior to the Lifeline Modernization Order because the Commission gave no notice it was considering changes as to service providers’ recertification procedures.

In the end, the fact that this provision was adopted in order to limited the burden of recertification on the National Verifier runs counter to one of the very reasons it was created in the first place – to limit the burden on Lifeline providers with respect to determining and managing consumers’ eligibility for the program. Even worse, carriers forced to modify their administrative processes now will be required to do so again once the National Verifier begins operating in their state, while also ensuring that it updates billing records on a monthly basis to cease providing Lifeline discounts when a customer is no longer eligible and has been de-enrolled. The Commission should instead delay implementation of rolling recertification until the National Verifier has been launched in that provider’s state to avoid placing unnecessary burdens on providers and causing confusion for consumers.<sup>16</sup>

### **Port Freeze**

The Rural Associations also reiterated their request for reconsideration of the “port-freeze” provisions contained in the *Lifeline Modernization Order*. Specifically, the Commission failed to provide proper notice of the intent to adopt a 12-month “port freeze” for Lifeline-supported BIAS service and administration of a new port freeze different from the 60-day voice port freeze will create a significant administrative burden for RLECs. RLECs today typically utilize one “Lifeline” billing code to denote subscribers to whom the Lifeline discount applies. Administration of the port-freeze provisions with separate durations will require RLECs to modify their billing systems to include at least two new billing codes to account for standalone BIAS subscribers and bundled voice and BIAS subscribers enrolled in the Lifeline program to accurately account for and report to USAC the applicable port freeze rule for each category of Lifeline enrolled subscribers.<sup>17</sup> Additional codes will be necessary to the extent the provider also offers a wireless voice and/or broadband service. Incorporation of these additional billing codes will in some cases require software updates and/or modifications to billing systems by outside billing vendors at not inconsequential cost. Alternatively, carriers will be required to

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<sup>14</sup> 5 U.S.C. § 553(b)(3) (requiring that notices of proposed rulemaking include “either the terms or substance of the proposed rule or a description of the subjects and issues involved.”).

<sup>15</sup> Rural Associations’ Petition, pp. 12-13.

<sup>16</sup> The Commission should in particular dismiss the assertion by certain consumer groups that rejection of rolling recertification and a return to the status quo of year-end recertification would somehow confuse consumers. Consumer Groups Consolidated Opposition, WC Docket No. 11-42 (fil. Jul. 29, 2016) (“Consolidated Opposition”). This argument seems to rest on the assertion that abandonment of rolling recertification could force Lifeline subscribers to recertify eligibility for the program multiple times a year. Yet, it is the adoption of the rolling recertification process that produces that result for some subscribers in 2017. For example, a customer enrolled on July 1, 2015 must recertify by Dec 31, 2016 and then again by July 1, 2017 with the recertification process beginning at least 60 days prior to a recertification deadline of July 1.

<sup>17</sup> Carriers will be required to report to NLAD whether a customer subscribes to voice-only service, a voice and broadband bundle where only the voice component meets the minimum service standard, a voice and broadband bundle where only the broadband component meets the minimum service standard, a voice and broadband bundle where both services meet the minimum service standards, or a broadband only service meeting the minimum service standards. Current billing systems are not structured to provide such detail.

manually comb through customer accounts to determine the appropriate port freeze for NLAD reporting purposes and keep NLAD up-to-date with respect to each Lifeline subscriber's service. The Rural Associations urged the Commission to either harmonize the port freeze durations (*i.e.* 60 days for each), clarify that until the voice support phase down begins subscribers may be reported as obtaining a voice service, or delay the implementation of the port freeze for one year.

### **Support for Standalone Voice Service**

Finally, the Rural Associations discussed their pending request that the Commission reconsider the phasing out of support for voice-only fixed and mobile service beginning December 1, 2019. The Commission should instead continue to provide consumers the option of subscribing to a voice-only service, particularly in circumstances in which a standalone or bundled broadband service is and will be unaffordable for the foreseeable future. Despite the fact that broadband is the dominant form of communications technology in use today, the fact remains that the Lifeline program was first conceived and remains today a literal Lifeline to low-income Americans in a time of emergency. It is particularly perplexing that the Commission would phase-out support for standalone voice in the wake of numerous other Commission rulemakings that have stressed and adopted new requirements for backup power, network resiliency and reliability and access to 911 services.<sup>18</sup> In that regard the phase down of support for standalone voice service in the Lifeline program represents a step backward in terms of public safety and one that threatens to effect most acutely low-income Americans.

Moreover, the phase-out of support for voice-only service is also particularly problematic for consumers living in areas served by RLECs. For one, the larger than average senior citizen population in rural areas may be particularly affected by the voice support phase out, as RLECs report that many of their Lifeline voice subscribers currently skew toward older retired populations and seniors tend to rely on fixed incomes. In addition, local voice rates for most rural Americans are continuing to increase pursuant to the Commission's rules. Commission rules adopting a "local rate floor" currently produce end-user voice rates in RLEC service areas of \$18 per month plus state regulated fees,<sup>19</sup> an increase of \$2 over 2015 levels.<sup>20</sup> The Commission has

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<sup>18</sup> See, Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, PS Docket No. 14-174, FCC 15-98, Report and Order, (rel. Aug. 7, 2015) ("Report and Order"). See also, Improving 911 Reliability, PS Docket No. 13-75, Report and Order, FCC 13-158 (rel. Dec. 12, 2013) (adopting "rules to improve the reliability and resiliency of 911 communications networks nationwide by requiring that 911 service providers take reasonable measures to provide reliable 911 service"); News Release: FCC Fines CenturyLink and Intrado \$17.4 million for Multi-State 911 Outage (Apr. 6, 2015) ("Delivering 911 calls is one of the most important public safety responsibilities a phone company has."), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-332853A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-332853A1.pdf).

<sup>19</sup> Wireline Competition Bureau Announces Results of 2016 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowances for ETCs Subject to Broadband and Public Interest Obligations, Public Notice, DA 16-362 (rel. Apr. 5, 2016), p. 1 ("To the extent that an ILEC's local rates (plus state regulated fees) in 2016 are less than \$18, that carrier's high-cost support will be reduced on a dollar-for-dollar basis"). See also, Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service – Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) ("*Transformation Order*"), ¶¶ 234-247.

<sup>20</sup> Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, Public Notice, DA 15-470 (rel. Apr. 16, 2015) ("To the extent that an ILEC's local rates (plus state regulated fees) in 2015 are less than \$16, that carrier's high-cost support will be reduced on a dollar-for-dollar basis.").

given no indication that future rate floor increases are not forthcoming and thus a total loss of Lifeline support for stand-alone voice service will therefore be particularly harmful for low-income rural consumers in areas where their local provider is subject to the rate floor.

Finally, the Rural Associations noted that while support for voice service is available as part of a bundled voice and BIAS package, for many rural low-income consumers served by the Rural Associations' members, 10/1 Mbps or 4/1 Mbps broadband, even when bundled with voice service, will in many cases continue to be unaffordable despite the availability of the Lifeline discount. In those circumstances, a number of low-income consumers will be forced to decide between subscribing to a more expensive broadband and voice bundle or forgoing Lifeline support altogether.

The Rural Associations therefore urged the Commission to reconsider the phase out of support for standalone voice to ensure that access to public safety services is within reach of every American. Indeed, the Commission could adopt more targeted reforms to the extent that it seeks to address a windfall to carriers for whom costs to provide the most basic voice service are low.

Sincerely,  
/s/ Patricia Cave  
Patricia Cave  
Director, Government Affairs

Cc (via email): Amy Bender